

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Wayne M. Magden

Operator Certification No. 3795

**ADMINISTRATIVE
CONSENT ORDER**

2012-WS- 02

2012-WW- 05

TO: Wayne M. Magden
1404 Ridgewood Avenue
Ames, Iowa 50010

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Wayne M. Magden hereby agree to the issuance of this administrative consent order (order) pertaining to drinking water and wastewater operator certification.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Janet Gastineau
Environmental Specialist
IDNR Field Office No. 5
401 SW 7th Street
Des Moines, Iowa 50309
Ph: 515- 725

Relating to legal issues:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515-281-6267

II. JURISDICTION

The parties agree that this action is pursuant to the authority granted in Iowa Code chapter 272C, Iowa Code sections 455B.219, 455B.175 and 455B.174, Iowa Code section 17A.18, 567 Iowa Administrative Code (IAC) 81.17(1)-(3) and 561 IAC chapter 7, as adopted by reference by 567 IAC chapter 7.

III. STATEMENT OF FACTS

1. Wayne M. Magden held a grade 4 drinking water distribution certificate renewed July 1, 2009 and a grade 4 drinking water treatment certificate renewed July 1, 2009, certificate no. 3795. The certificates expired on June 30, 2011. Mr. Magden applied for

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renewal of his certification but later withdrew the renewal application. At the current time, Mr. Magden does not hold an operator certificate from the State of Iowa for drinking water distribution, drinking water treatment or wastewater at any grade level.

2. Wayne M. Magden was employed by the City of Ames, Iowa (City) in the Ames Water Treatment Plant as a water plant operator from October 29, 1979 through April 5, 2011. He worked one of three shifts, which rotated weekly. By a memo dated April 2, 2011, John Dunn, Director of the Ames Water Pollution Control Department for the City, notified Wayne Magden that he was placed on paid administrative leave, pending a pre-disciplinary hearing to be held on April 5, 2011. Prior to the hearing, Mr. Magden submitted his resignation.

3. The City alleged in the April 2, 2011 memo to Mr. Magden that he failed to perform his duties as a shift operator during the month of March of 2011. The memo stated that review of video from hidden security cameras documented portions of four different operating shifts of Mr. Magden. Mr. Dunn stated in his memo that he reviewed this information and "observed five different sampling events where you clearly failed to collect all of the required samples and failed to perform all of the required analyses. Despite your failure to collect or analyze all required samples, you entered values onto the written operator log sheets indicating that you had, in fact, collected and analyzed those samples and signed your name to the log sheet as the operator responsible for the shift. Your actions constitute an egregious dereliction of duty of the most severe nature."

4. Further investigation and interviews with other operators at the City's drinking water plant indicated their concerns about the performance of Mr. Magden. One operator who followed Mr. Magden's shift reported that there were inconsistencies in the quality of water, which would require him to make readjustments to the water treatment. He indicated that this was not a problem when he followed other operator's shifts. He said there were also times when he began his shift that Mr. Magden would inform him that the test results that he would receive would not match those of Mr. Magden's tests. He stated that Mr. Magden also stated this to other City operators. Two other operators confirmed to the police investigator that Mr. Magden had made similar statements to them. Operators that followed Mr. Magden's shift indicated that they often had to make corrections for problems at the plant that originated during Mr. Magden's shift.

5. Wayne M. Magden received a letter of reprimand dated July 11, 2008 from the City due to failure to perform assigned duties and due to demonstrating a lack of professional judgment. The most recent investigation by the City also identified other incidents where Mr. Magden was suspended without pay for not conducting the water quality control tests, insubordination and abandoning his job.

6. In view of the violations stated in this order, the Department finds that there would have been good cause to revoke the operator certification issued to Wayne M. Magden and to deny reissuance of operator certification to Mr. Magden, had his operator

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certification not expired on July 1, 2011. Mr. Magden withdrew his application for renewal of his certification prior to that date. As of July 1, 2011 Mr. Magden was no longer certified as a drinking water operator by the Department. The Department and Wayne M. Magden agree through the issuance of this order that Mr. Magden will not file any future application with the Department for water treatment or water distribution certification at any grade level and will not file any application with the Department to be certified as a wastewater operator at any grade level by the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 455B.212, 455B.213(1) and 272C.1(6)"x" authorize the Director of the Department to establish water treatment and water distribution certification programs. In addition, Iowa Code section 455B.219 and Iowa Code sections 272C.3 and 272C.10 authorize the Department to establish criteria for taking disciplinary actions and a range of sanctions that may be imposed including but not limited to suspension and revocation of operator certifications and assessment of civil penalties. The Environmental Protection Commission (Commission) pursuant to its rule making authority in Iowa Code section 455B.105(3) has adopted rules establishing the certification programs and providing for disciplinary actions in 567 IAC chapter 81.

2. Iowa code sections 455B.219 and 272C.10 and Department subrule 567 IAC 81.17(1) specify criteria which may form the basis for a disciplinary action. Disciplinary actions may include revocation, partial revocation, suspension, probation, requirements for additional education, training and examination, and assessment of civil penalties up to \$1,000.00. See Iowa code section 272C.3(2)"e" and 567 IAC 81.17(2).

3. Iowa Code section 455B.219 authorizes the Director of the Department to suspend or revoke the certification of an operator. This Code section provides as follows:

455B.219 Revocation or suspension.

The director may suspend or revoke the certificate of an operator, following a hearing before the director, when the operator is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the operator's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plant. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.

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8. Willful or repeated violations of division III of this chapter.
4. Under 567 IAC 81.17(1), the criteria for disciplinary action include the following:
- a. Failure to use reasonable care or judgment to to apply knowledge or ability in performing the duties of a certified operator.
 - b. Failure to submit required records of operation or other reports required under applicable permits or rules of the Department, including the failure to submit complete records or reports.
 - c. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the Department.
 - d. Fraud in procuring a license.
 - e. Professional incompetence.
 - f. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
 - g. Habitual intoxication or addiction to the use of drugs.
 - h. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or guilty plea shall be conclusive evidence.
 - i. Fraud in representations as to skill or ability.
 - j. Use of untruthful or improbable statements in advertisements.
 - k. Willful or repeated violations of the provisions of Iowa Code chapters 272C or 455B, division III.

5. Based on the facts available to the Department at this time, the Department had sufficient cause to revoke the certification of Mr. Magden as a drinking water operator had Mr. Magden not withdrawn his application for renewal of certification and if he had been reissued certification as a drinking water operator. Based on the same facts, the Department maintains that it has sufficient cause to deny Mr. Magden recertification as a drinking water operator or wastewater operator at any grade level in the State of Iowa. The facts stated in Section III of this order's Statement of Facts establish that the criteria of 567 IAC 81.17(1)"a", "c" and "f" have been met due to Mr. Magden's failure to conduct all required tests during his shifts in April 2011 and the reporting of test results for tests not conducted on the City's drinking water records.

V. ORDER

The Department and Wayne M. Magden hereby agree that Wayne M. Magden will not apply at any time in the future with the Department for water distribution and water treatment operator certification at any grade level. The parties additionally agree that Wayne M. Magden will not apply at any time in the future with the Department for wastewater certification at any grade level.

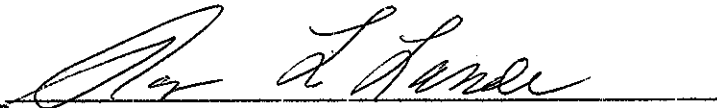
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VI. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Wayne M. Magden. By signature to this order, all rights to appeal this order are waived. The parties agree that this order is effective upon signature of the Director to this order.


WAYNE M. MAGDEN

Dated this 22 day of
February, 2012


ROGER L. LANDE
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26th day of
February, 2012

Wayne M. Magden- Operator Certification No. 3795, Janet Gastineau- Field Office No. 5, Diana Hansen- Legal Services Bureau, EPA Region VII, I.D.